

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

08 CIV 7428
JUDGE HOLWELL

ECF CASE

HYPERCUBE, LLC

and

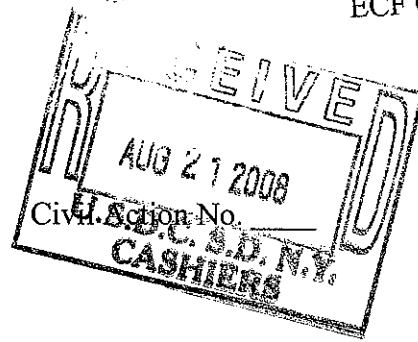
HYPERCUBE TELECOM, LLC

Plaintiffs,

v.

COMTEL TELCOM ASSETS LP
D/B/A EXCEL TELECOMMUNICATIONS

Defendant.



COMPLAINT

COMES NOW, Hypercube, LLC and Hypercube Telecom, LLC (f/k/a KMC Data LLC), collectively “Hypercube” or “Plaintiffs,” by their undersigned counsel, and bring this Complaint against Comtel Telcom Assets LP, d/b/a Excel Telecommunications (“Excel”) and, in support of thereof, state as follows:

INTRODUCTION

1. This action arises from Excel’s unlawful refusal to pay Plaintiffs for work performed as part of Excel’s provision of toll-free, “800” calling services to Excel’s customers.
2. The parties are telecommunications carriers. Excel offers certain of its customers toll-free calling services, which are commonly referred to as “800 services” or “8YY services.”¹

¹ The industry term “8YY” recognizes that toll free dialing codes in addition to “800” exist, such as “888.”

When Excel provides its customer with an 8YY service, other consumers and carriers alike know that Excel (and ultimately its customers) are responsible for all costs associated with delivering the toll-free call to Excel's customer. These costs include the use of other carriers' networks to originate a toll-free call and the process by which other carriers query industry databases to make sure the 8YY call is routed correctly. Each 8YY number is a toll-free proxy for a traditional telephone number. When a carrier originates a call to an 8YY number, the carrier must query a database that maintains a list of telecommunications carriers offering 8YY service. Through performing this database query, also known as a "dip," the carrier originating an 8YY telephone call ensures that calls are sent to the correct telecommunications carrier, and ultimately to the correct customer destination.

3. Plaintiffs have performed their duties as telecommunications carriers to (i) allow Excel to utilize Plaintiffs' network to receive 8YY calls and (ii) to query the appropriate database to make sure traffic is correctly routed to Excel. Excel refuses to pay Plaintiffs' lawfully assessed access charges for transmitting the 8YY calls. However, Excel has compensated Hypercube for work performed for database queries. To date, Excel has offered no explanation as to why it will pay for database queries but not for access charges associated with Excel's use of Hypercube's network for originating 8YY call destined for Excel's customers.

PARTIES

4. HyperCube, LLC is a Delaware limited liability company with its principal place of business at 3200 West Pleasant Run Road, Suite 260, Lancaster, Texas 75146, and is the parent of its wholly owned subsidiary, Hypercube Telecom, LLC. HyperCube, LLC provides management services to Hypercube Telecom, LLC, including billing services.

5. Hypercube Telecom, LLC is a Delaware limited liability company with its principal place of business at 3200 West Pleasant Run Road, Suite 260, Lancaster, Texas 75146 that is in the business of, among other things, providing interstate and intrastate telecommunications services to various customers, including interexchange carriers (“IXCs”), commonly referred to as “long-distance carriers.”

6. Excel is a Texas Limited Partnership with its principal place of business at 433 Las Colinas Boulevard East, Suite 1300, Irving, Texas 75039 that is also in the business of providing interstate and intrastate telecommunications service to various customers. Excel’s service offerings include long distance service and toll-free, 8YY calling services.

JURISDICTION AND VENUE

7. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and 47 U.S.C. §§ 206 and 207. The matter in controversy relates to rights identified by federal statute, specifically 47 U.S.C. §§ 201, 202, and 203, and thus arises under federal statutory and common law, and the amount in controversy exceeds the sum specified in 28 U.S.C. § 1337. This Court has supplemental jurisdiction over the pendant state-law claims under 28 U.S.C. § 1367. Plaintiffs’ claim for declaratory relief is cognizable under 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because Excel does business in this District, and is subject to personal jurisdiction here. Hypercube has sent millions of minutes of that originate in this District to Excel for transmission to Excel’s 8YY customers, and each month the number of minutes of traffic sent by Plaintiffs to Excel increases by many hundreds of thousands of minutes.

REGULATORY BACKGROUND

9. Historically, telephone service in the United States was largely provided by a single, integrated company, known as AT&T. In 1984, AT&T was split into “local” and “long distance” companies. The local telephone companies, known as local exchange carriers (“LECs”), maintained exclusive franchises to provide telephone service within defined geographic service territories. By contrast, the long distance portion of AT&T was faced with competition from other IXC, such as MCI, Sprint, and many others.

10. IXCs generally utilized their own lines to carry calls across a state or across the country. They did not, however, own the telephone lines within the local exchange. Rather, those lines were owned by the LECs. To enable long distance competition, the FCC required LECs to allow IXCs to use their local lines for purposes of “originating” and “terminating” telephone calls. For example, when a consumer made a long distance call, the consumer’s LEC would “originate” the call and hand it off to the IXC. The IXC would carry the call across its network and deliver it to a LEC to “terminate” the call to the dialed customer. Without this requirement, LECs could have frustrated long distance competition by refusing to allow IXCs to use the local exchange network for routing long distance calls.

11. To compensate LECs for use of their networks, the FCC required IXCs to pay “access charges” for “originating” and “terminating” long distance telephone calls. These access charges were set forth in regulated price lists, known as tariffs, filed with the FCC and state public service commissions. These tariffs ensured that IXCs were treated fairly by making like service offerings available to all IXCs.

12. In 1996, Congress overhauled the nation’s telecommunications laws with the Telecommunications Act (“1996 Act”). As part of the 1996 Act, Congress eliminated the

exclusive franchises possessed by incumbent LECs (“ILECs”) and preempted state “statute[s],” “regulation[s],” and other “legal requirement[s]” that “prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services.” 47 U.S.C. § 253(a). The effect of this section was to compel all states to open their local telecommunications market to competition from new entrants, known as competitive local exchange carriers (“CLECs”).

13. Congress also required all telecommunications carriers – local and long distance carriers, alike – to interconnect their networks “directly or indirectly with the facilities and equipment of other telecommunications carriers.” 47 U.S.C. § 251(a). Interconnection ensures that all consumers can place calls to and receive calls from consumers that are served by a different telecommunications carrier. Without an interconnection requirement, consumers that purchase service from one carrier would have no assurance of their ability to place calls to consumers served by other carriers.

14. As is the case for all LECs, the CLECs generally file tariffs with the FCC and state public service commissions describing their terms and conditions of service. Under FCC regulations, CLECs are entitled to charge the same rates as ILECs for providing originating and terminating access charges for interstate calls. This is true even when the CLEC does not directly serve the consumer making the call, so long as the CLEC performs the work. State public service commissions are responsible for establishing any applicable regulations for calls that originate and terminate within the same state (*i.e.*, are “intrastate” rather than “interstate”). In addition to network access charges for use of the their network, CLECs also are entitled to charge a database query fee for looking up the IXC associated with the dialed 8YY number.

Through this database query, the CLEC is able to identify the proper IXC to which the dialed 8YY is to be routed.

FACTS

15. Plaintiffs provide interstate and intrastate access services to various customers, including IXCs and commercial mobile radio service carriers (commonly referred to as wireless carriers). Plaintiffs' claims in the present complaint concern only Plaintiffs' provision of interstate and intrastate access services to Excel.

16. When wireless customers' toll-free calls are routed through the Plaintiffs' facilities, Plaintiffs provide access services and database query services to the IXC that is being paid by its customers to provide the toll-free service to those customers.

17. When Plaintiffs provide access and associated database query services in connection with a call made from a wireless telephone, the call is routed from the wireless carrier's Mobile Telecommunications Switching Office ("MTSO") to Plaintiffs' network and switching equipment.

18. While the call is in the Plaintiffs' switch, Plaintiffs perform switching and routing functions and additional services, such as running a query of the national 8YY telephone number database to determine where the call should be routed (known as a "database dip"). Once the database returns information regarding the IXC whose 8YY customer has been called, Plaintiffs' switch performs the necessary routing to deliver the call to the IXC's network.

19. Common carriers, like Hypercube Telecom, LLC, have an obligation to route traffic to other carriers, such as Excel. As a result of this obligation and in consideration for

work performed, Plaintiffs are entitled to bill and to collect charges for the access services and database query charges provided to other carriers, including Excel for its 8YY customers.

EXCEL'S FAILURE TO PAY FOR WORK PERFORMED BY PLAINTIFFS

20. Plaintiffs' FCC tariff sets forth the terms and conditions according to which Plaintiffs provide interstate access charges and database query charges to Excel in connection with Excel's 8YY offering. Plaintiffs' state tariffs set forth the terms and conditions of these same services where a call originates and terminates in the same state. In instances where Plaintiffs do not have an intrastate tariff filed with the relevant state public service commission, charges are set at then-prevailing market rates and thus determined by principles of *quantum meruit*.

21. From November 2005 through the present, Plaintiffs have routed calls to Excel as part of the 8YY service that Excel offers to its customers. On information and belief, no other entity has charged Excel for the access services or database query services performed by Plaintiffs' switch and network.

22. From December 2005 through July 2007, with the exception of late payment fees, Excel paid Plaintiffs in full for virtually all of the access services and database query services performed by Plaintiffs' switch and network.

23. Beginning in August 2007, Excel began withholding amounts owed for access services provided by Plaintiffs. Copies of the invoices rendered by Hypercube associated with Excel's refusal to pay for access services provided by Plaintiffs are attached hereto as Exhibit A.

24. On March 12, 2008, Excel transmitted its only written dispute letter regarding Plaintiffs' invoices. Plaintiffs investigated Excel's claimed disputes and confirmed that

Plaintiffs performed for Excel all of the access services and database query services for which Plaintiffs invoiced Excel. Accordingly, Plaintiffs denied Excel's dispute letter in writing on April 11, 2008.

25. Although Excel has continued to withhold amounts for access services provided, Excel has continued to pay in full Plaintiff's database query charges.

26. Since 2005 and continuing through the present, Excel has received, accepted, and benefited from Plaintiffs interstate and intrastate access services and database query services in connection with Excel's 8YY offering to its customers. Excel accepted the calls that Plaintiff originated and confirmed (through database queries) were destined to Excel's 8YY customers. Excel delivered those calls to its customers as part of Excel's 8YY service offering. On information and belief, Excel received payment from its 8YY customers for all calls Plaintiffs transmitted to Excel. In short, Excel wants to collect revenue from its customers for providing toll-free service without paying the costs that Plaintiffs – which are legally obligated to deliver calls to Excel – incurred in delivering the toll-free calls to Excel.

27. At all times relevant hereto, Excel has had actual and constructive notice of Plaintiffs' interstate and intrastate access and associated database query charges for originating 8YY traffic. Excel continues to receive, use, and benefit from Plaintiffs' interstate and intrastate access service and database query services.

28. To date, Excel has refused to pay an amount not less than \$1,378,247.57 in Plaintiffs' lawfully billed charges to Excel for interstate and intrastate access service.

29. The amount overdue from Excel for Plaintiffs' access service represents service provided during the months of August 2007 through May 2008. These amounts continue to grow by over \$100,000 each month as: (i) Plaintiffs continue to satisfy their statutory duty as a

common carrier to provide services to Excel; (ii) Excel avails itself of Plaintiffs services; (iii) Excel utilizes those services as an input to the 8YY services Excel provides to its customers and for which Excel receives payment; and (iv) Excel refuses to pay for the services received from Plaintiffs.

30. Excel's refusal to pay these charges and associated late fees is without legal justification or excuse.

COUNT I
(Breach of Tariff)

31. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 30, above.

32. Since November 2005, Excel has received, accepted, and benefited from Plaintiffs' provision of interstate and intrastate access services and database query services, which Excel has used to provide 8YY services to its customers.

33. By accepting these services that were offered by Plaintiffs pursuant to federal and state tariffs, Excel has agreed and is required by law to pay Plaintiffs the tariffed rates for the services provided.

34. At all times relevant to this lawsuit, Excel has continued, and to this day continues, to accept and benefit from these interstate and intrastate access and database query services provided by Plaintiffs.

35. Excel continues to refuse to pay the interstate and intrastate access charges due under the tariffs and appropriately billed by Plaintiffs for the services that Plaintiffs rendered. Excel has paid Plaintiff's database query fees due under the tariffs and appropriately billed by Plaintiffs for the services that Plaintiffs rendered.

36. On information and belief, no other entity has billed Excel for the work performed by Plaintiffs' switch and network.

37. Excel has refused to pay amounts due and owed to Plaintiffs without legal justification or excuse, and in breach of its legal obligations imposed by its acceptance of interstate and intrastate access services pursuant to Plaintiffs' federal and state tariffs.

38. By failing to pay charges and associated late fees for tariffed access services rendered by Plaintiffs, Excel has breached Plaintiffs' federal and state tariffs.

39. Plaintiffs have been damaged by Excel's purposeful breaches of the federal tariff and state tariffs, in an amount to be proved at trial and which continues to increase daily, which includes interstate and intrastate access charges associated with Excel's 8YY services, and late fees, attorneys' fees and expenses.

COUNT II
(Quantum Meruit)

40. Plaintiffs re-allege and incorporate the allegations contained in paragraphs 1 through 39, above.

41. Since November 2005, Plaintiffs have provided to Excel interstate and intrastate access services and database query services, which Excel has accepted and used to provide 8YY services to its customers.

42. Excel has continued to accept the services provided by Plaintiffs and to forward the toll-free calls to Excel's customers, who pay Excel to receive the calls that Plaintiffs deliver to Excel.

43. By its provision of interstate and intrastate access services and associated database query services to Excel, Plaintiffs conferred a benefit on Excel at Plaintiffs' expense and to Plaintiffs' detriment.

44. Excel knew that it would, and intended to, receive a benefit from the interstate and intrastate access services and database query services provided to it by Plaintiffs.

45. Although Excel has compensated Plaintiffs for database query services provided by Plaintiffs, Excel has refused to compensate Plaintiffs for interstate and intrastate access services. Excel accepted and retained that benefit under circumstances which make it inequitable for there to be no return payment to Plaintiffs for the value of the interstate and intrastate access it provided to Excel.

46. By accepting these services provided by Plaintiffs, if there is no express contract between Plaintiffs and Excel for the payment of such charges, Excel is bound to pay the fair market value of those services under the doctrine of *quantum meruit*. Plaintiffs have been damaged in an amount to be proven at trial as a consequence of Excel's failure to pay the fair market value for the services it received, plus interest.

COUNT III
(Declaratory Judgment)

47. Plaintiffs re-allege and incorporate the allegations contained in paragraphs 1 through 46, above.

48. A present, actionable and justiciable controversy exists with respect to the legal rights between the parties. Such controversy arises under the Federal Communications Act, 47 U.S.C. §§ 201, *et seq.*, and under the laws of the United States. Litigation between the parties is unavoidable.

49. Excel's refusal to pay interstate and intrastate access charges with Excel's 8YY offering to its customers and Excel's refusal to pay associated late fees are ongoing and repeated practices.

50. On information and belief, absent a declaratory judgment, Excel will continue its wrongful practices of refusing to pay interstate and intrastate access charges, and late fees for these services from which it benefits.

51. It would be unduly burdensome and inefficient for Plaintiffs to bring new actions for damages each time Excel wrongfully refuses to pay an invoice.

52. Accordingly, Plaintiffs are entitled to a declaratory judgment and such further relief based upon that declaratory judgment as the Court deems proper, pursuant to 28 U.S.C. §§ 2201 and 2202, determining that Plaintiffs:

- a) Have lawfully charged Excel on for services rendered in the provision of interstate and intrastate access services, either pursuant to Plaintiffs' duly filed federal and state tariffs or in accordance with the principles of equity.
- b) Excel has breached the express contracts between it and Plaintiffs by refusing and failing to pay interstate access charges and associated late fees, either as set forth in Plaintiffs federal and state tariffs or as established as a matter of equity.
- c) Plaintiffs have been damaged by Excel's breaches of the express contracts; and
- d) Excel is contractually and equitably obligated to make timely payment of these charges and late fees as said charges become due.

WHEREFORE, Plaintiffs pray that this Court:

- a) Award Plaintiffs damages for Excel's breaches of the tariff, in an amount to be proved at trial;

- b) In addition to the unpaid tariff charges, or in the alternative, award Plaintiffs damages against Excel in the amount of the just and fair value of Plaintiffs' services pursuant to the doctrine of *quantum meruit*;
- c) Issue a declaratory judgment that Plaintiffs are lawfully permitted to bill for Excel for interstate and intrastate access services obtained by Excel for the provision of its 8YY services to its customers; that Excel is obligated to pay Plaintiffs for said services, including any late fees billed, in a timely manner and such further relief based upon said judgment as the Court deems proper;
- d) Award Plaintiffs late payment charges as permitted by its tariffs and pre- and post-judgment interest;
- e) Tax the costs, fees, and expenses of this action to Excel, including the reasonable attorneys' fees and expert witness fees of Plaintiffs to the extent permitted by law and Plaintiffs' tariffs; and
- f) Award such other and further relief as the Court deems just and proper.

This the 21st day of August 2008

Respectfully submitted,

ROBINSON & MCDONALD LLP

By: 

Jayne S. Robinson

61 Broadway

Suite 1415

New York, NY 10006

Telephone: (212) 953-3888

Facsimile: (212) 953-3690

Jayne@robinsonmcdonald.com

Counsel to Hypercube, LLC and
Hypercube Telecom, LLC (f/k/a
KMC Data LLC)

Of Counsel:

Michael B. Hazzard
Joseph Bowser
Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, N.W., Seventh Floor
Washington, D.C. 20005
Telephone: (202) 467-6900
Facsimile: (202) 261-0035
mhazzard@wcsr.com

EXHIBIT A

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Ban: D295550457
Invoice Number: 9555-0457D-080708
Company Code: 9555
Lata Code: 552
Bill Date: 08/07/2008
Page: 1

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunications
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill	\$1,328,527.10
Payments Applied	(\$50,612.42)
Total Balance Due	\$1,277,914.68

*** DETAIL OF CURRENT CHARGES ***

TX	
Usage Charges	\$81,987.48
Interstate/Interlata	\$55,269.38
Intrastate/Interlata	\$26,713.73
Intrastate/Intralata	\$4.37
TX	
Other Charges and Credits	\$18,345.41
Total Current Charges	\$100,332.89
Total Amount Due Aug 20, 2008	\$1,378,247.57

Remit Payment To:
HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:
Routing Number 113193532
Account Number 9770840355

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Ban: D295550457
Invoice Number: 9555-0457D-070708
Company Code: 9555
Lata Code: 552
Bill Date: 07/07/2008
Page: 1

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunicatios
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill \$1,223,541.07

Total Balance Due \$1,223,541.07

*** DETAIL OF CURRENT CHARGES ***

TX
Usage Charges \$88,421.03
Interstate/Interlata \$60,305.98
Intrastate/Interlata \$28,114.42
Intrastate/Intralata \$0.63
TX
Other Charges and Credits \$16,565.00

Total Current Charges \$104,986.03

Total Amount Due Aug 20, 2008 \$1,328,527.10

Remit Payment To:

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:

Routing Number 113193532
Account Number 9770840355

Ban: D295550457

Invoice Number: 9555-0457D-060708

Company Code: 9555

Lata Code: 552

Bill Date: 06/07/2008

Page: 1

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunications
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill \$1,133,521.64

Payments Applied (\$13,850.05)

Total Balance Due \$1,119,671.59

*** DETAIL OF CURRENT CHARGES ***

TX

Usage Charges \$88,269.13

Interstate/Interlata \$59,007.20

Intrastate/Interlata \$29,261.93

Intrastate/Intralata \$0.00

TX

Other Charges and Credits \$15,600.35

Total Current Charges \$103,869.48

Total Amount Due Aug 20, 2008 \$1,223,541.07

Remit Payment To:

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:

Routing Number 113193532
Account Number 9770840355

Ban: D295550457

Invoice Number: 9555-0457D-050708

Company Code: 9555

Lata Code: 552

Bill Date: 05/07/2008

Page: 1

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunicatios
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill \$1,041,972.36

Payments Applied (\$11,690.51)

Total Balance Due \$1,030,281.85

*** DETAIL OF CURRENT CHARGES ***

TX

Usage Charges \$91,384.59

Interstate/Interlata \$57,200.63

Intrastate/Interlata \$34,183.96

TX

Other Charges and Credits \$11,855.20

Total Current Charges \$103,239.79

Total Amount Due Aug 20, 2008 \$1,133,521.64

Remit Payment To:

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:

Routing Number 113193532
Account Number 9770840355

Ban: D295550457
Invoice Number: 9555-0457D-040708
Company Code: 9555
Lata Code: 552
Bill Date: 04/07/2008
Page: 1

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Excel Communications
Comtel Telecom Assets LP dba Excel Telecommunications
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill \$812,624.42

Total Balance Due \$812,624.42

*** DETAIL OF CURRENT CHARGES ***

TX

Usage Charges \$219,871.60

Interstate/interlata \$33,870.96

Intrastate/interlata \$186,000.64

TX

Other Charges and Credits \$9,476.34

Total Current Charges \$229,347.94

Total Amount Due Aug 20, 2008 \$1,041,972.36

Remit Payment To:
HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:
Routing Number 113193532
Account Number 9770840355

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Ban: D295550457
Invoice Number: 9555-0457D-030708
Company Code: 9555
Lata Code: 552
Bill Date: 03/07/2008
Page: 1

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunications
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill	\$627,964.23
Payments Applied	(\$8,096.16)
Total Balance Due	\$619,868.07

*** DETAIL OF CURRENT CHARGES ***

TX	
Usage Charges	\$187,906.64
Interstate/Interlata	\$28,382.71
Intrastate/Interlata	\$159,523.93
TX	
Other Charges and Credits	\$4,849.71
Total Current Charges	\$192,756.35
Total Amount Due Aug 20, 2008	\$812,624.42

Remit Payment To:
HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:
Routing Number 113193532
Account Number 9770840355

Ban: D295550457

Invoice Number: 9555-0457D-020708

Company Code: 9555

Lata Code: 552

Bill Date: 02/07/2008

Page: 1

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunicatios
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill	\$470,457.32
Payments Applied	(\$6,247.98)
Total Balance Due	\$464,209.34

*** DETAIL OF CURRENT CHARGES ***

TX	
Usage Charges	\$158,421.35
Interstate/Interlata	\$23,162.83
Intrastate/Interlata	\$135,258.52
TX	
Other Charges and Credits	\$5,333.54
Total Current Charges	\$163,754.89
Total Amount Due Aug 20, 2008	\$627,964.23

Remit Payment To:
HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:
Routing Number 113193532
Account Number 9770840355

Ban: D295550457

Invoice Number: 9555-0457D-010708

Company Code: 9555

Lata Code: 552

Bill Date: 01/07/2008

Page: 1

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Excel Communications
Comtel Telecom Assets LP dba Excel Telecommunicatios
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill	\$361,615.48
Payments Applied	(\$10,116.96)
Total Balance Due	\$351,498.52

*** DETAIL OF CURRENT CHARGES ***

TX	
Usage Charges	\$115,115.15
Interstate/Interlata	\$16,563.70
Intrastate/Interlata	\$98,551.45
TX	
Other Charges and Credits	\$3,843.65
Total Current Charges	\$118,958.80
Total Amount Due Aug 20, 2008	\$470,457.32

Remit Payment To:
HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:
Routing Number 113193532
Account Number 9770840355

Ban: D295550457

Invoice Number: 9555-0457D-120707

Company Code: 9555

Lata Code: 552

Bill Date: 12/07/2007

Page: 1

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunications
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill \$259,853.09

Total Balance Due \$259,853.09

*** DETAIL OF CURRENT CHARGES ***

TX

Usage Charges \$99,193.79

Interstate/Interlata \$13,947.43

Intrastate/Interlata \$85,246.36

TX

Other Charges and Credits \$2,568.60

Total Current Charges \$101,762.39

Total Amount Due Aug 20, 2008 \$361,615.48

Remit Payment To:

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:

Routing Number 113193532
Account Number 9770840355

Ban: D295550457
Invoice Number: 9555-0457D-110707
Company Code: 9555
Lata Code: 552
Bill Date: 11/07/2007
Page: 1

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunicatios
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill \$182,179.91

Payments Applied (\$8,561.63)

Total Balance Due \$173,618.28

*** DETAIL OF CURRENT CHARGES ***

TX

Usage Charges \$84,605.92

Interstate/Interlata \$12,646.37

Intrastate/Interlata \$71,959.55

TX

Other Charges and Credits \$1,628.89

Total Current Charges \$86,234.81

Total Amount Due Aug 20, 2008 \$259,853.09

Remit Payment To:
HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:
Routing Number 113193532
Account Number 9770840355

HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
LANCASTER, TX 75146

Ban: D295550457
Invoice Number: 9555-0457D-100707
Company Code: 9556
Lata Code: 552
Bill Date: 10/07/2007
Page: 1

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunicatios
433 E. Las Colinas Blvd
Suite 1300
Irving, TX 75039

Billing Inquiries Contact (469)727-1593

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill	\$112,693.75
Adjustments Applied	(\$68.60)
Total Balance Due	\$112,625.15

*** DETAIL OF CURRENT CHARGES ***

TX	
Usage Charges	\$69,554.76
Interstate/Interlata	\$11,633.05
Intrastate/Interlata	\$57,921.71
Total Current Charges	\$69,554.76
Total Amount Due Aug 20, 2008.	\$182,179.91

Remit Payment To:
HYPERCUBE LLC
DBA KMC DATA LLC
3200 W PLEASANT RUN RD
SUITE 260
LANCASTER, TX 75146

Wire Transfer To:
Routing Number 113193532
Account Number 9770840355

HYPERCUBE LLC.
DBA KMC DATA LLC
3200 W. Pleasant Run Road
Lancaster, TX 75146

Ban: D295550457
Invoice Number: 9555-0457D-090707
Company Code: 9555
Lata Code: 552
Bill Date: 09/07/2007
Page: 1

Excel Communications
Comtel Telcom Assets LP dba Excel Telecommunications
433 E. Las Colinas Blvd
Irving, TX 75039

Billing Inquiries Contact (678)387-2809

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill	\$101,892.20
Payments Applied	(\$36,871.66)
Total Balance Due	\$65,020.54

*** DETAIL OF CURRENT CHARGES ***

TX	
Usage Charges	\$47,617.61
Interstate/Interlata	\$8,049.73
Intrastate/Interlata	\$39,567.88
TX	
Other Charges and Credits	\$55.60
Total Current Charges	\$47,673.21
Total Amount Due Sep 17, 2007	\$112,693.75

Remit Payment To:
HYPERCUBE LLC.
DBA KMC DATA LLC
3200 W. Pleasant Run Road
Suite 260
Lancaster, TX 75146

Wire Transfer To:
HyperCube, LLC dba KMC Data, LLC
3200 W. Pleasant Run Rd #260
Routing Number 111901629
Account Number 040110551
Lancaster, TX 75146

HYPERCUBE LLC.
DBA KMC DATA LLC
3200 W. Pleasant Run Road
Lancaster, TX 75146

Ban: D295550457
Invoice Number: 955507310703790
Company Code: 9555
Lata Code: 552
Bill Date: 08/07/2007
Page: 1

Excel Communications
Comtel Telecom Assets LP dba Excel Telecommunications
433 E. Las Colinas Blvd
Irving, TX 75039

Billing Inquiries Contact (678)387-2809

SWITCHED ACCESS SERVICE

Meet Point Bill

FEATURE GROUP D

*** BALANCE DUE INFORMATION ***

Total Amount of Last Bill	\$78,743.26
Payments Applied	(\$41,803.00)
Total Balance Due	\$36,940.26

*** DETAIL OF CURRENT CHARGES ***

TX	
Usage Charges	\$64,456.12
Interstate/Interlata	\$11,518.14
Intrastate/Interlata	\$52,937.98
TX	
Other Charges and Credits	\$495.82
Total Current Charges	\$64,951.94
Total Amount Due Sep 17, 2007	\$101,892.20

Remit Payment To:
HYPERCUBE LLC.
DBA KMC DATA LLC
3200 W. Pleasant Run Road
Suite 260
Lancaster, TX 75146

Wire Transfer To:
HyperCube,LLC dba KMC Data,LLC
3200 W. Pleasant Run Rd #260
Routing Number 111901629
Account Number 040110551
Lancaster, TX 75146